

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1144 of 1999**

Malawati Sahu, wife of Shiv Kumar Sahu, aged about 30 years,
resident of Deopuri, Tehsil and District Raipur, MP (now CG)

---- Appellant**Versus**

State of Madhya Pradesh (Now Chhattisgarh).

---- Respondent

For Appellant	:Shri MD Dhote, Advocate.
For Respondent/State	:Shri Lav Sharma, Panel Lawyer

S.B.:- Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****07.11.2017**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 22.9.1999 passed by the Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), Raipur in Special Criminal Case No. 328/1997, wherein the trial Court has convicted the appellant under Section 20(b)(i) read with Section 8 of the Act and sentenced him to undergo imprisonment for five years and fine of Rs.10,000/-, in default of payment of fine to further undergo R.I. for one year.

2. As per the prosecution case on 12.9.1997, at about 5.20 pm, Station House Officer of Police Station Tikrapara, Raipur namely- D.S. Parihar (PW8) received information that Deepak Shah unloaded ganja in the house of the accused/appellant

Malawati Sahu, situated at village Deopuri, on which, the said Police Officer prepared one Panchanama and recorded information in Rojnamcha Sanha (Ex. P/16) and then sent the information to City Superintendent of Police, Mana, namely- A.K. Jha(PW7). As per directions of the superior officer, Police officers and trap party reached to the house of the accused/appellant. The accused/appellant consented for search of her house and thereafter, C.S.P., A.K. Jha (PW7) and other Panch witnesses searched the house of the accused/appellant and found ganja kept in 3 bags. On weight, quantity of ganja was found 18 kg, 20 kg and 14 kg in the respective bags. 50 gms of ganja was separated from each bag as sample and rest of the article was sealed. The samples were sealed and same were kept in safe custody and thereafter it was sent for chemical examination to the Forensic Science Laboratory. The test of ganja was found positive. Upon completion of investigation, charge sheet was filed against the accused/appellant. The trial Court framed charges against the accused/appellant to which, she did not plead guilty and thereafter trial was conducted and after completion of trial, the trial Court has convicted and sentenced the accused/appellant as above.

3. Learned counsel for the appellant submits as under:

I) That seizure witness, Ravi Gilhare (PW1) and Ravindra Kumar Banjare (PW3) have not supported the factum of seizure and therefore, it is not established that the ganja was kept in the house of the accused/appellant.

II) That compliance of Section 42(1) and 50 of the Act was not done and for non-compliance of mandatory provisions, the accused/appellant cannot be convicted.

III) Seizure of the article from the house of the accused/appellant is not done as per provisions of Section 50(4) of the Act and conviction cannot be rest as there is no sufficient compliance of the Act.

4. On the other hand, learned counsel for the State submits that the finding of the trial Court is strictly in accordance with law and the same is not liable to be interfered with by this Court invoking jurisdiction of the appeal.

5. I have heard counsel for the parties and perused the material on record.

6. To substantiate the charge prosecution has examined as many as 8 witnesses. To nullify the charge, defence has examined one witness.

7. A.K. Jha was posted as City Superintendent of Police at Raipur, who is examined as Prosecution Witness No.7 in the present case. He deposed that he received information from Assistant Sub Inspector, G.N. Tiwari on 12.9.1997 in the evening that the accused/appellant is in possession of illegal contraband ganja and the same can be searched in her house. After receiving the information, he rushed to Police Station, Tikrapara and from there he rushed to village Deopuri with Station incharge D.S. Parihar, A.S.I. G.N. Tiwari and other members of the police force. They started at 5.30 pm from Raipur and after 10-15

minutes they reached to the house of the accused/appellant at village Deopuri. He further deposed that the accused/appellant was called for interrogation and obtained her consent for search of the house vide Ex.P/1. After obtaining consent they searched the house of the accused/appellant in which ganja was found kept in three different bags and weight of the bags was taken by one Milan, which was found to be 18 kg, 20 kg and 14 kg. 50 gms of the ganja was separated from each bag as sample and three separate packets were prepared and rest of the ganja was sealed in three bags. Seizure memo was prepared as per Ex.P/3 and search of the staff was prepared as per Ex. P/2. After completion of the proceedings, he returned to the Police Station and registered FIR as per Ex.P/12. The seized articles were given to the Incharge of Malkhana of the Police Station and three sealed packets were sent as per memo Ex. P/3 to the Forensic Science Laboratory. The report of the F.S.L. was received as per Ex. P/14 and test of ganja was found positive. Version of this witness is supported by the D.S.Parihar, Police Inspector(PW8) and he deposed in same line. He deposed that Rojnamcha Sanha No. 692 dated 12.9.1997 is Ex.P/16 in which it is mentioned that information about the said ganja was received at 17.20 pm and thereafter, the panchanama was prepared and information was sent to City Superintendent of Police. Again in Rojnamcha Sanha No.693 at 17.25 conversation between C.S.P. and the officer on telephone is recorded which is Annexure P/17. Proceeding towards village Deopuri is recorded in Rojnamcha Sanha No.695

as Ex.P/18 and after completion of proceeding returning to Police Station is recorded as per Ex. P/19 which is Rojnamcha Sanha No. 701.

8. It is true that seizure witnesses Mohanlal Sahu (PW6) and Rameshwar Sahu (PW5) have not supported the factum of seizure and witness Ravindra Banjare (PW3) deposed that he was informed by the Police that ganja was seized from the house of the accused/appellant. Ravi Gilhare (PW1) deposed that he signed the papers on request of Police Officer and therefore, they are not corroborating the factum of seizure, but it is settled law that if version of the Police Officer is not shaken and can be relied on then version of the Police Officer cannot be rejected merely on the ground that he is a Police Officer. When version of both the Police Officers is supported by the document kept in Police Station for recording day to day activities, the same cannot be rejected.

9. Ranjeet Viswas (DW1) deposed that Police Officers were scolding the accused/appellant that ganja was recovered from her house to which she was denying, but this witness stated it before the court on 3.2.1999 that is after 1 year and 5 months of the incident and previously he was not on the screen of the proceedings therefore, his version cannot be relied on.

10. From the record, it is established that the information was sent to the Police Officer as per Section 42 (2) of the Act and again search was made in presence of the accused/appellant

after obtaining her consent and there is nothing on record to discard the evidence adduced by the prosecution.

11. The arguments advanced on behalf of the accused/appellant is not sustainable and looking to the evidence, the finding of the trial Court is based on the established fact and the conviction is well within legal aspect of the matter and same is not liable to be interfered with invoking jurisdiction of appeal. Accordingly, the conviction of the appellant is hereby affirmed.

12. Heard on the point of sentence.

13. The trial Court has awarded the sentence prevailing at the time of awarding sentence and the Act provides for deterrent sentence and the same cannot be interfered with lightly.

14. For the foregoing reasons, the appeal being devoid of merits is liable to be and is hereby dismissed.

**Sd/
(Ram Prasanna Sharma)
JUDGE**